

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-M No.13696 of 2014**

Date of decision: 11<sup>th</sup> August, 2015

Swaran Singh

... Petitioner

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. C.L. Verma, Advocate  
for the petitioner.

Mr. J.S. Brar, Asstt. Advocate General, Punjab.

**FATEH DEEP SINGH, J.**

Through this petition under Section 482 Cr.P.C., the petitioner who at the relevant time was posted as Sub Inspector, while on official duty in Ludhiana was entrusted with one Walkie Talkie set TK-270 branch Kenwood bearing No.71200784 in the discharge of his duties. It is during the course of events as per the averments of the State, the set got misplaced. A departmental inquiry against the petitioner was conducted whereby two years' approved service was forfeited with cumulative effect. The delinquent petitioner was asked to make good the loss and as a consequence of which he paid the value of the lost set amounting to ₹8,787 which was recovered by the

department. It was subsequent thereto on the basis of a letter No.1501/3E-6 dated 22.05.2013 from the office of Additional Director General of Police, Information Technology and Telecommunication, Punjab, Chandigarh, based on the instructions of D.C.P.W. New Delhi had registered FIR No.135 dated 03.10.2013 under Section 409 IPC at Police Station Division No.8 (Kailash Chowk), Ludhiana (Annexure P5). Thus, it is in the light of these circumstances, the petitioner has sought indulgence of this Court in terms of Section 482 Cr.P.C. seeking quashing of the FIR (Annexure P5) and subsequent proceedings arising therefrom against the petitioner.

Heard Mr. C.L. Verma, Advocate representing the petitioner and Mr.J.S. Brar, Asstt. Advocate General, Punjab.

The very first step into the initiation of criminal action by way of FIR (Annexure P5) and its bare perusal reflects that it was only a case of misplaced wireless set. Admittedly, it has been also conceded and stands reflected from the proceedings in the FIR in terms of Rules 2.33, 2.34 of Punjab Financial Rules (Rule-1), the recovery had been made from the petitioner as to the purchase value of the missing Walkie Talkie set and it is only after a usual departmental action by way of inquiry and forfeiture of two annual increments with cumulative effect and on the receipt of the letter from the higher authorities based on the letter of the Home Ministry, Union Government has led to the registration of the FIR. Thus, as has been argued by the petitioner's side, it is not that there was commission of criminal offence but it is on account of instructions for registration of a case in case of loss of such an article and certainly, does not

necessarily implies that it has to be registered against the person who was entrusted with the article. The same has been provided for as a safeguard having regard to the national interests over the security angle. The perusal of the report under Section 173 Cr.P.C. nowhere depicts that there was any element of malafidness in this loss. It is not disputed as per the contentions of the learned State counsel that the petitioner is a public servant and who was entrusted with the article in question and thus, fulfills the very first essential of criminal breach of trust but however, the most important and vital ingredient whether the accused was actuated by dishonest intention or not which led to this misappropriation, is certainly totally missing from the case in hand.

The matter harbours around the element of civil nature where the employee is guilty of a lapse and the very element of mens-rea which is most essential ingredient of a criminal offence is certainly missing. Even the own stand of the complainant side squarely accepts this fact and the fact that there is no evidence to prima facie show commission of a criminal offence by the petitioner. Though learned counsel for the petitioner has placed reliance upon '**Radha Pisharassiar Amma v. State of Kerala**' 2008(1) RCR (Criminal) 80; and '**Kailash Kumar Sanwatia v. The State of Bihar and another**' 2003(4) RCR (Criminal) 274 to infuse force in his contentions that the basic requirement to bring home the accusation for criminal offence under Section 409 IPC was totally missing and the fact that there is not even an iota of evidence against the accused for such an offence certainly remains unrebutted as even the State has accepted the fact

that there is no element of allegation of misappropriation or dishonest intent.

Admittedly, the challan has been presented in the Court and what one could gather from the stand of the State and the matter is at the stage of framing of charge and going through all the evidence so deemed to have been collected prima facie shows that even from the uncontroverted averments of the FIR and the challan no offence is taken to have been made out and if the present proceedings against the petitioner are allowed to go on after such tangible stand of the State, it would be a pure misuse of the process of the Court and a futile exercise of chasing a mirage and thus, nothing would come out of it except unnecessarily burdening the Court below. So the present case is one of the rarest of the rare cases where the Court feels it prudent and is so necessitated to exercise its inherent powers under Section 482 Cr.P.C.

Thus, allowing the present petition, the FIR (Annexure P5) along with all consequent proceedings hereby stand quashed.

**(FATEH DEEP SINGH)**  
**JUDGE**

**August 11, 2015**  
*rps*